Supreme Court, U.S.
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No. 09-1536

In The

Supreme Court of the United States

GERALD MOLNAR,

Petitioner,

v.

CARE HOUSE, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

CARSON J. TUCKER, ESQ.
ZAUSMER, KAUFMAN, AUGUST
CALDWELL & TAYLER, P.C.
31700 Middlebelt Road, Suite 150
Farmington Hills, Michigan 48334
(248) 851-4111
ctucker@zkact.com

Counsel for Respondents, Amy Allen and Care House

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

COUNTER-STATEMENT OF QUESTIONS PRESENTED[1]

* * *

3. Whether a private non-profit organization engaged in the primary function of protecting minor children from abuse is a "state actor" for purposes of 42 U.S.C. § 1983 when the organization's primary function is not "exclusively the prerogative of the state" and where the nature of the function provides countervailing reasons why the organization should not be considered a state actor.

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[1] Respondents, Amy Allen and Care House, hereafter "the Care House Respondents", do not address the first two of Petitioner's questions presented as they do not pertain to the Care House Respondents and/or they have been adequately briefed by learned counsel for the Municipal Defendants.

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SUMMARY OF ARGUMENTS

While the Court of Appeals did not address this issue, The Care House Respondents did benefit from a thorough, well-written district court opinion in which Judge Rosen utilized nearly thirteen pages analyzing the question of whether the Care House Respondents could be considered state actors, and if so, whether they could be held liable under 42 U.S.C. § 1983.

In their brief on appeal, the Care House Respondents explained the Sixth Circuit's analysis of the "state actor" issue under three separate tests enunciated by this Court over the years.[2] This Court has made it clear that private, non-profit organizations are not "state actors" despite the fact that they may receive public funding from the state, be regulated by the state, and perform services for the state where such services are not exclusively the prerogative of the state.[3] This Court has repeatedly addressed this analysis in a variety of circumstances. Moreover, this Court has noted that even if the private entity may be considered a state actor, countervailing reasons may exist which mitigate against

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[2] As noted by the district court, the Sixth Circuit has only recognized three of the tests: (1) the public function test; (2) the state compulsion test; and (3) the nexus or symbiotic relationship case. See *Burton v. Wilmintong Parking Auth.*, 365 U.S. 715, 721-26 (1961).

[3] *Rendell-Baker v. Kohn*, 457 U.S. 830, 840-43 (1982).

imposing liability under 42 U.S.C. § 1983.[4] The Sixth Circuit has followed this Court's precedent and has refused to impose liability under § 1983 against private entities performing a variety of analogous services.

In the instant case, the Care House Respondents were engaged in their primary function of protecting minor children from abuse – any abuse, be it at the hands of a parent, a guardian or a governmental agency or institution. Under each of the tests applied to consider whether a private entity is a state actor, the Care House Respondents were not performing a function exclusively within the prerogative of the state, were not compelled, either overtly or covertly to act in the manner they did, and had no entwined nexus with the state such that their actions could be seen as being fairly attributable to the state. Finally, the important and paramount function of the Care House Respondents is to protect minor children from abuse and this countervailing reason alone is sufficient, even if the Care House Respondents are deemed to be state actors, to refrain from imposing § 1983 liability against them.

Even if this Court were to conclude that the Care House Respondents were state actors in this case, Petitioner still has to demonstrate that their actions were the proximate cause of the injury of which he

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[4] *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288, 303-04 (2001)

complains. Numerous cases in this circuit as well as others hold that even law enforcement officers who actively investigate and ferret out criminal activity are not liable under § 1983 where the plaintiff has been subsequently prosecuted, whether or not a conviction results. In the instant case, the Care House Respondents presented evidence that they did nothing to encourage, elicit or create testimony, they did not actively participate in the investigation and prosecution, and they were not compelled by the state to do so. Petitioner failed to rebut this evidence.[5] For

[5] Petitioner's briefings included references to documents that are not a part of the lower court (district court) record in this case. The Care House Respondents objected to the motion filed by Petitioner seeking to move the Circuit Court to accept non-record materials or, in the alternative, to take judicial notice of *facts* that were not a part of the record. As stated in its objection, the Care House Respondents do not read Fed. R. App. P. 10(e) as allowing a party to *add to* the record in the Circuit Court documents, materials, or evidence which were not already a part of the district court record. The Circuit Court denied Petitioner's motion, but nonetheless adhered to the view that it had "equitable powers" to supplement the record. See *Inland Bulk Transfer Co. v. Cummins Engine Co.*, 332 F.3d 1007, 1012 (6th Cir. 2003). To the extent that this Court reads the rule as allowing the Circuit Court to create a record which contains items that were not part of the district court record below, the Care House Respondents respectfully disagree with that interpretation as it would seem to allow for unbridled opportunity to re-litigate cases in the Circuit Courts as if they were tribunals of first instance.

these reasons, as further discussed herein, Petitioner's request for review of the Circuit Court's opinion should be denied.

ARGUMENTS

I. The Care House Respondents Were Not State Actors and Therefore No Viable § 1983 Claims Can Be Brought Against Them

To prevail on a § 1983 claim, a plaintiff must show the deprivation of a right protected by the Constitution or laws of the United States that was caused by a person acting under color of state law. *Boykin v. Van Buren Twp.*, 479 F.3d 444, 451 (6th Cir. 2007). The Sixth Circuit continues to apply three separate tests to determine whether a defendant is a state actor. *Chapman v. Higbee Co.*, 319 F.3d 825, 833 (6th Cir. 2003); *S.H.A.R.K. v. Metro Parks Serving Summit County*, 499 F.3d 553, 564 (6th Cir. 2007) (recognizing that this Court's decision in *Brentwood v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288, 295-96 (2001) applied a case-by-case "normative and fact-bound" inquiry). These tests are: (1) the "public function" test; (2) the "state-compulsion test"; and (3) the "nexus" test. *S.H.A.R.K.*, *supra*.

Under the "public function" test, a private entity will be engaged in state action only if the challenged conduct is an exercise of a power that is "traditionally exclusively reserved to the state, such as holding

elections or eminent domain." *S.H.A.R.K.*, *supra*. The "state compulsion" test requires the state to exercise such coercive power or provide such significant encouragement, either overt or covert, that in law the choice of the private actor is deemed to be that of the state. *Id.* at 565. Under the "nexus" or "symbiotic relationship" test, the action of a private party constitutes state action when there is a sufficiently close nexus between the state and the challenged action of the private entity such that the actions or conduct of the latter may be fairly treated as that of the state itself. *Id.* As explained in the *S.H.A.R.K.* decision this Court in *Brentwood*, *supra* at 291, found state action based on "pervasive entwinement," between the private actor and the state such that there was no "offsetting reason to see the association's acts in any other way." *Id.* "Entwinement" according to this Court, could exist where a private entity is "entwined with governmental policies", or where the private entity is subject to public management or control. *Brentwood*, *supra* at 295-98. However, even where there is *pervasive entwinement*, this Court noted that a finding of state action "may be outweighed in the name of some value at odds with finding public accountability in the circumstances." *Id.* at 303. The Court used the example of the public defender, whose salary was paid by the state and whose employment would be conclusive of state action in some cases, but not when the lawyer was doing his or her primary job, "then, the public defender does not act on behalf of the state" but is, instead, the state's adversary. *Id.* at 303-04 (internal citations omitted). Applying each

of these above-mentioned approaches reveals that the district court properly concluded that The Care House Respondents were not state actors.

1. No Public Function: The Care House Respondents were Not Engaged In Conduct that is an Exclusively Reserved Prerogative of the State

Matters exclusively within the prerogative of the state, such as the conducting of elections and the exercise of the sovereign's right of eminent domain fulfill the category of activities which, if engaged in by a private entity, may subject that entity to characterization as a "state actor" for purposes of 42 U.S.C. § 1983. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 352-53 (1974) (citing examples).

Several courts have held that providing social welfare services to minors is not a "traditionally exclusive governmental function." *Reguli v. Guffee*, Slip Copy, 2009 WL 425020, *4-6 (M.D. Tenn. 2009); *Martinez v. County of Kern*, 2007 WL 1079937, *5-6 (E.D. Cal. 2007) (holding that *placement* recommendations of minor children that had been removed from their original homes was not "state action" as the recommendations and actions of the private organizations were distinguished from *actual removal from custody*, which was a prerogative exclusively within the auspices of the state); *Mabe v. San Bernardino County Dept. of Social Services*, 237 F.3d 1101, 1109, n. 3 (9th Cir. 2001) (foster parents not

state actors); *Rayburn ex. rel. Rayburn v. Hogue*, 241 F.3d 1341, 1348 (11th Cir. 2001) (same); *Robert S. v. Stetson School, Inc.*, 256 F.3d 159, 168, n. 9 (3rd Cir. 2001) (legal custodian not state actor); *Malachowski v. City of Keene*, 787 F.2d 704, 710-11 (1st Cir. 1986), cert. denied 107 S. Ct. 107 (1986) (a private, non-profit organization that made available foster care for state agencies and provided recommendations to the juvenile courts with respect to child placement was not a state actor because decisions regarding disposition and recommendations regarding placement were not exclusive prerogatives of the state).

In the instant case the Care House Respondents were engaged in their primary function, which was to advocate, prevent, intervene in and treat child abuse and neglect. RE #37, the Care House Respondents' Motion for Summary Judgment, Exhibit 3, p. 2, ¶ 3.[5] Care House's motto is "It shouldn't hurt to be a child" and Care House "provides the community with a multi-disciplinary team approach to the problem of child abuse, as well as a safe environment for the child victim to be heard and ongoing support for abused children and their non-offending family members." *Id.*, pp. 2-3. As noted by the cited cases, social welfare organizations that provide a variety of similar services to the community are not engaged in an activity that is an exclusive prerogative of the

[5] "RE" refers to the numbered record entries submitted in the Circuit Court

state, such as the conducting of elections or the exercise of eminent domain. In the instant case, the district court correctly concluded that the Care House Respondents did not meet the "public function" test to be considered state actors for purposes of § 1983 liability.

2. *No State Compulsion: The Care House Respondents were Not Overtly or Covertly Coerced or Encouraged by the State*

Despite the fact that Petitioner attempts to create a set of factual circumstances to demonstrate that the Care House Respondents were coerced by or encouraged by the state to engage in the conduct complained of, the record presented by the Care House Respondents in their motion for summary judgment demonstrates that there was no overt or covert pressure exerted by the state.

In *Rendell-Baker*, *supra* at 841-42, this Court discussed the "state compulsion" theory as applied to a privately operated high school for maladjusted youths in a § 1983 action filed by the school's former teachers and counselors. The Court pointed out that the school received public funds, was a party to a government contract, accepted students on referral by the government, and yet, it was not a "state actor". *Id.* at 840. The Court noted that the school was analogous to the "public defender" who was determined not to be a state actor in *Polk County v. Dodson*, 454 U.S. 312, 318 (1981), because, although the

state paid the public defender, the relationship with her client was like that of any other lawyer-client relationship. *Id.*

The instant situation is nearly analogous. Although Care House receives funding from the state, takes all of its referrals from state agencies, and is a party to government contracts to provide its services, the primary goal and function, and thus, the duty and loyalty reposed in Care House is to the minor child. The only "compulsion" that exerts influence over Care House is the asserted goal of advocating against, preventing, intervening in and treating child abuse and neglect. As with the public defender's client in *Polk County*, *supra*, the primary beneficiary of Care House's services is the child. That law enforcement officials may become involved where there is suspected criminal conduct involving the child is only an affirmation of Care House's duty to protect the child and its statutory obligations to report such suspected criminal conduct. This "compulsion" however in no way makes Care House a state actor because the reporting of suspected criminal activity is secondary to its primary goal of providing the child with an opportunity to be free of abuse and neglect.

3. No Nexus: The Care House Respondents Were Not Engaged in Conduct or Actions that Could Be Fairly Treated as Actions of the State

The state is charged with the duty of ferreting out criminal activity through the exercise of the law enforcement function and prosecuting such crimes where there is probable cause to believe that they have been committed. Care House's stated goal is advocating against, preventing, intervening in and treating child abuse and neglect.

Amy Allen stated that neither she nor anyone else from Care House "was involved in the investigation which took place after the interview." RE #37, The Care House Respondents' Motion for Summary Judgment Exhibit 3, ¶ 12. She stated that she "did not provide counseling, treatment or have any further contacts with Elizabeth Molnar (Petitioner's daughter), other than incidental contact when seeing her in court while waiting for court hearings." *Id.* Amy Allen further stated that she "did not participate in the decision making process engaged in by the Oakland County Prosecutor's office with respect to filing and/or pursuing criminal charges against [Petitioner]." *Id.*, ¶ 13. In her affidavit, Amy Allen states that she "did not investigate the basis for, nor seek, nor institute, nor maintain any criminal charges" against Petitioner. *Id.*, pp. 4-5, ¶ 15. She also states that she "did not encourage or participate in the investigation by the Troy Police nor in the investigation, actions

and decisions made by the Oakland County Prosecutor." *Id.*, p. 5, ¶ 16.

State action may be found only if there is such a "close nexus between the state and the challenged action" that seemingly private behavior "may be fairly treated as that of the state itself." *Jackson*, *supra* at 351. The Supreme Court has refined this test to include the concept of "entwinement". *Brentwood*, *supra* at 288-89. Under this test, attribution of state action may occur where the private entity "is entwined with governmental policies or when government is entwined in [the private entity's] management or control." *Id.* However, the Court continues to recognize the "public function" test's requirement that a private entity that exercises a function that is exclusively within the prerogative of the state would be considered a state actor. Thus, the mere fact that a private entity may forward general governmental policies in parity with other governmental agencies, as in this case, the detection, prevention and treatment of child abuse and neglect, in no way reaches a level of "entwinement" that could be attributed to purely or exclusively state action. Indeed, Care House's goal is to protect the child, regardless of whether that protection may be for *or against* the state in a given case. Moreover, there is no evidence that the government exercises direction, management or control over Care House.

The district court examined the factual materials presented and found that there was no nexus between the exercise of the state's assertive power to

ferret out criminal activity and the services performed by Care House. RE #52, p. 18, citing *People v. Wilhelm*, 822 N.Y.S.2d 786 (2006); *People v. Greene*, 760 N.Y.S.2d 769 (2003). Additionally, the district court analyzed whether there was management or control over Care House consistent with the "entwinement" analysis presented in *Brentwood*, *supra*. RE #52, pp. 17-18. The district court correctly concluded that the Care House Respondents did not meet the definition of "state actor" under the nexus test.

4. Countervailing Concerns Mitigate Against Finding "State Action"

Even if "entwinement" were to be applied here, and the Care House Respondents could be said to have been engaged in "state action", countervailing concerns mitigate in favor of preserving, indeed, insulating the Care House Respondents from the liabilities imposed by § 1983. See *Brentwood*, *supra* at 303 ("[e]ven facts that suffice to show public action (or, standing alone, would require such a finding) may be outweighed in the name of some value at odds with finding public accountability in the circumstances"). As much as it is the obligation of law enforcement officials, prosecutors, and the state to investigate and prosecute suspected criminal activity, here, the primary obligation of the Care House Respondents is to protect minor children. The *recipient* of its services, those with respect to whom it performs its primary activity, is neither the state or the child's parent or foster parents. It is the child who benefits from Care

House's obligation to discover and reveal whether it might be more beneficial, in order to protect the child's interests, that the child remain with their current guardian where the interview's results reveals no abuse or neglect. Hence, the motto: "It shouldn't hurt to be a child."

As Justice Souter aptly noted in the *Brentwood* case, even a public defender, whose salary is paid by the state and who is definitely a state employee whose actions and conduct would be conclusive of state action in some circumstances, is ordinarily in a position that is adverse to the state, performing his or her primary job of defending a client being prosecuted by the state. *Brentwood, supra* at 303-04. Indeed, as it is Care House's stated role to be engaged "solely [in] the advocacy, prevention, intervention and treatment of child abuse and neglect", see RE #52 District Court Opinion, p. 4; RE #37, The Care House Respondents' Motion for Summary Judgment, p. 11 and Exhibit 3, Amy Allen's Affidavit, they are as likely to be so engaged *against* a state actor who might be engaged in abuse of a child as against a parent or foster parent accused of abuse on behalf of the recipient of their services. Admittedly, as the Care House Respondents confirm, more often than not it is a family member or private custodian that engages in abuse, but this fact does not absolve them of their obligation to perform their function where similar concerns might exist where the child is in the custody of a state agency or institution. Law enforcement officers, prosecutors and judges have as much of an

obligation to investigate, prosecute and convict in the latter case as much as in the former. Thus, preserving the independent role of such entities as Care House for the benefit of the minor child outweighs the concerns of the suspected offending individual, even where, in some circumstances, the entity might be otherwise sufficiently entwined with the state to make it a state actor. *Brentwood*, *supra* at 303-04.

If no neglect or abuse is revealed or discovered, despite allegations and accusations by state actors or others acting in concert, then the private entity will have performed its function and no further action will be taken – which is to say that the child will be deemed to have been protected. In this case, specifically, were it to be determined that The Care House Respondents are state actors for purposes of § 1983, then their stated objective would be frustrated as much by pressures and coercion from the state as from the parents or individuals from whom the minor children must be protected. Of course, the former is precisely what is alleged in the instant case, i.e., that the Care House Respondents conspired with the other government defendants to deprive Petitioner of his right to parent. However, the application of this allegation in one instance by no means creates a reason to ignore the countervailing reasons stated to liberate private organizations and their employees from the threat of being state actors whenever they attempt to perform their primary function. In short, to conclude that they are subject to § 1983 as state actors in such circumstances (which is revealing and

discovering facts in order to protect children) would be nothing short of rendering the function impotent to the benefit of either the abusive custodian or the state's decision, and, in either case, to the child's detriment.

As established, the Care House Respondents took no active or intentional part in going forward with a criminal prosecution. RE #37, The Care House Respondents' Motion for Summary Judgment Exhibit 3, pp. 2-5. Their goal was to protect the minor child by revealing and discovering facts which establish that the *current custodial environment* of the child, whether it be with one or another parent, a foster parent, a relative, or even a state agency, is a threat to the health, safety, and welfare *of the child*. If such facts are revealed or established by Care House then it will have performed its primary function and the subsequent course of action is undertaken by others. This is a countervailing reason sufficient to withhold application of § 1983 despite a finding of entwinement. *Brentwood*, *supra* at 303-04.

5. Analogous Case Law

With respect to non-profit organizations that provide social welfare services to minor children, other courts have come to similar conclusions as did the district court in this instance. Thus, in *Reguli v. Guffee*, Slip Copy, 2009 WL 425020, *4-6 (M.D. Tenn. 2009), the district court ruled that the counselor of a non-profit organization did not have a sufficiently close nexus to the state to be fairly treated as having

performed actions of the state for purposes of a parent's § 1983 claim alleging a violation of the "right to parent". *Id.* The non-profit organization for which the counselor worked provided social welfare services to teenagers with a history of violence or abuse. *Id.* at *4. The counselor had informed the state's child protective services agency that the parent had hit and choked her daughter. *Id.* After numerous prosecutorial proceedings, the child protective services agency dropped the charges. *Id.* Applying all three of the tests acknowledged by the Sixth Circuit, the district court concluded that there was no "state action" on the part of the counselor such that a § 1983 claim could proceed. *Id.* at *5, citing *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288, 295 (2001); *Chapman v. Higbee Co.*, 319 F.3d 825, 833 (6th Cir. 2003).

Applying the public function test, the district court ruled that providing social welfare services to minors was not a "traditionally exclusive governmental function". *Id.* at *5. Further, the district court noted that there was no evidence in the record that the organization serviced only clients by court order or that it served a function reserved exclusively to the state, such as holding an election or exercising eminent domain. *Id.* Under the "state compulsion" test, the district court noted that the plaintiff had alleged that the organization and the counselor met the requirements of this test because they were directed to provide a specific program and report the child's progress to the court. The district court noted that the

"state compulsion test" required that the state "exercise such coercive power or provide such significant encouragement, either overt or covert, that in law the choice of the private actor is deemed to be that of the state." *Id.*, citing *S.H.A.R.K. v. Metro Parks Serving Summit County*, 499 F.3d 553, 565 (6th Cir. 2007). The district court concluded that the activity complained of did not meet the "state compulsion" test because there was no evidence that the state exercised "coercive power" over the conduct of the organization or the counselor. *Id.* The dispositive factor, according to the district court, was that there was no evidence that the state "monitored or controlled *the conduct*" of the counselor or the organization in a way that could be deemed to have been the action of the state. *Id.* (emphasis added). Finally, the district court concluded that the "nexus" test had not been met

Similar results have been reached in other circuits. *Martinez v. County of Kern*, 2007 WL 1079937, *5-6 (E.D. Cal. 2007) (holding that *placement* recommendations of minor children that had been removed from their original homes was not "state action" as the recommendations and actions of the private organizations were distinguished from *actual removal from custody*, which was a prerogative exclusively within the auspices of the state); *Mabe v. San Bernardino County Dept. of Social Services*, 237 F.3d 1101, 1109, n. 3 (9th Cir. 2001) (foster parents not state actors); *Rayburn ex. rel. Rayburn v. Hogue*, 241 F.3d 1341, 1348 (11th Cir. 2001) (same); *Robert S. v. Stetson School, Inc.*, 256 F.3d 159, 168, n. 9 (3rd Cir.

2001) (legal custodian not state actor); *Malachowski v. City of Keene*, 787 F.2d 704, 710-11 (1st Cir. 1986), cert. denied, 107 S. Ct. 107 (1986) (a private, non-profit organization that made available foster care for state agencies and provided recommendations to the juvenile courts with respect to child placement was not a state actor because decisions regarding disposition and recommendations regarding placement were not exclusive prerogatives of the state).

Remarkably, in each of the cases cited in which "state action" was *not* found, the private, non-profit organizations were engaged in exceedingly greater involvement and conduct than the Care House Respondents in the instant case. As noted by the district court, the only involvement that the Care House Respondents had in this matter was to conduct the interview of Petitioner's minor daughter, which was being observed, without her knowledge, by a law enforcement official, a crisis counselor, Care House's coordinator, and an assistant prosecutor. RE #52, p. 5; RE #37, The Care House Respondents' Brief in Support of Summary Judgment, Exhibit 2, Care House Records, p. 4. The Care House Respondents played no role in the investigation, recommendations and decisions which were made by law enforcement officials and prosecutors to actually prosecute Petitioner. RE #37, The Care House Respondents' Brief in Support of Summary Judgment, Exhibit 3, Amy Allen's Affidavit. The record demonstrates that the Care House Respondents conducted an interview, the objective results of which were available for review

and decision by law enforcement and prosecutors. These actions on the part of the Care House Respondents are even more removed from those in the cited cases finding no state action where a private, non-profit organization actually plays a proactive role in recommending and deciding placement options for minor children. *Reguli*, *supra* at *4-6; *Martinez*, *supra* at *5-6; *Malachowski*, *supra* at 710-11.

It should be noted that the district court concluded that, even assuming that the Care House Respondents could be deemed state actors, Petitioner's § 1983 claim failed as a matter of law because he failed to produce any evidence that the actions and/or conduct of these defendants was the proximate cause of any alleged injury. The district court correctly cited the prevailing case law in the Sixth Circuit which holds that preliminary factual and investigative steps that lead to prosecution and conviction or other orders from a court are only remote causes of the event forming the basis of the § 1983 claim. *Sutkiewicz v. Carlson*, 850 F.Supp. 579, 588-89 (E.D. Mich. 1994), rev'd on other grounds by *Sutkiewicz v. Monroe County Sheriff*, 110 F.3d 352 (6th Cir. 1997).

II. Collateral Estoppel Bars Petitioner's Claims Against The Care House Respondents

Assuming arguendo that the Care House Respondents were state actors and that a § 1983 claim could be brought against them, the district court correctly concluded that Petitioner was collaterally

estopped from asserting such claims against them. As the district court noted, the only actions in which the Care House Respondents engaged were (1) interviewing Elizabeth, (2) informing the Troy Police that a previous abuse claim file involving Petitioner and his children had been closed as unsubstantiated, and (3) Amy Allen's testimony as a witness for Petitioner at the preliminary hearing to determine probable cause. At that preliminary examination, which is an adversary proceeding under Michigan law, *People v. Johnson*, 154 N.W.2d 671 (1967), Petitioner contested the issue of probable cause. He was represented by counsel, who cross-examined witnesses produced by the prosecution. At the conclusion of the preliminary examination, the state trial court concluded that there was probable cause. RE #37, The Care House Respondents' Motion and Brief in Support of Summary Disposition, Exhibit 6, Circuit Court Transcript, pp. 137-39. Under these circumstances, since Petitioner had a "full and fair opportunity" to litigate the issue of probable cause at the prior state court proceeding *and* because the only acts engaged in by the Care House Respondents was the provision of objective information arising out of the results of a previous investigation and the interview of Petitioner's daughter, Petitioner is collaterally estopped from proceeding with his § 1983 against these defendants. *Coogan v. City of Wixom*, 820 F.2d 170, 175 (6th Cir. 1987) (holding that plaintiff in a § 1983 lawsuit was collaterally estopped from litigating the issue of

probable cause since it was fully explored at a preliminary examination and he was bound over for trial).

As the district court correctly noted, where questions arise as to the integrity of the allegations and evidence provided against the individual claiming a subsequent violation or deprivation of rights under § 1983, a claim may be stated, although ultimately not proved. However, where, as here, the Care House Respondents were "not influenced, directed or controlled by any of the individuals who observed the interview", RE #37, The Care House Respondents' Motion for Summary Judgment Exhibit 3, p. 3, ¶ 7; were not "involved in the investigation which took place after the interview," *id.* ¶ 12; "did not participate in the decision making process engaged in by the Oakland County Prosecutor's office with respect to filing and/or pursuing criminal charges against Mr. Petitioner," *id.*, ¶ 13; and "did not encourage or participate in the investigation by the Troy Police nor in the investigation, actions and decisions made by the Oakland County Prosecutor," *id.*, p. 5, ¶ 16, a § 1983 claim would not lie. *Skousen v. Brighton High School*, 305 F3d 520, 529 (6th Cir. 2002) (holding that where there was no evidence that police officers made or were even involved in a decision to prosecute a claim under § 1983 for malicious prosecution could not survive). In the instant case, the involvement of the Care House Respondents is even further removed from the ultimate injury complained of by Petitioner. The Care House Respondents engaged in acts which revealed certain objective facts, which

law enforcement officials then referred to the county prosecutor, who then brought charges against Petitioner before a trial court judge who found sufficient probable cause existed after conducting a preliminary examination at which Petitioner was represented by counsel who cross-examined the prosecution's witnesses and presented witnesses on behalf of Petitioner. Certainly if a police officer's minimal involvement in law enforcement absent any showing of malicious intent or false testimony cannot provide the basis for a § 1983 claim where subsequent events reveal the existence, at least, of probable cause, the Care House Respondents are even more insulated and removed from the chain of causation and proximate cause necessary to support a § 1983 claim. *Sutkiewicz*, *supra* at 588 (proximate (legal) cause is an essential element of a § 1983 claim). As the Care House Respondents initially argued that collateral estoppel barred Petitioner's § 1983 against them, and as demonstrated by the foregoing analysis, Petitioner has failed to rebut the evidence in the record that these defendants were in no way involved in recommending, deciding, or directing the course of the investigation against Petitioner, he is barred from proceeding against them under § 1983. *Skousen*, *supra*.

CONCLUSION

The district court correctly entered summary judgment in favor of the Care House Respondents where there was no evidence that could ever be presented to demonstrate that they were state actors. The district court also correctly ruled that if the Care House Respondents were state actors, their actions and conduct could not have been the proximate (legal) cause of the injuries complained of. Moreover, even if the Care House Respondents are state actors, countervailing circumstances exist to protect this entity while it goes about performing its primary function to protect minor children from abuse and neglect. Alternatively, the doctrine of collateral estoppel bars Petitioner's claim.

For the foregoing reasons, Petitioner's request for review of the Circuit Court's opinion should be denied.

Respectfully submitted,

Carson J. Tucker, Esq.
Zausmer, Kaufman, August
Caldwell & Tayler, P.C.
31700 Middlebelt Road, Suite 150
Farmington Hills, Michigan 48334
(248) 851-4111
ctucker@zkact.com

Counsel for Respondents,
Amy Allen and Care House

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